

JUDGE KAPLAN

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THERESA BERMAN and PHIL BERMAN,

Plaintiffs,

-against-

BELLEVUE SOUTH ASSOCIATES LLP, PHIPPS  
HOUSES SERVICES INC., WILLIAM  
MULLIGAN, JOSEPHINE PERRELLA, LISA  
BLOUNT, NEIL D. SONNENFELDT, EDDIE  
WARREN, VINCENT BANCEK, JULIA  
RODRIGUEZ, FJC SECURITY, AMERICAN RED  
CROSS, THE CITY OF NEW YORK - N.Y.P.D.  
and THE CITY OF NEW YORK - F.D.N.Y.,

Defendants.  
-----X

Civil Action No.:

07 CIV 7859

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK:

Defendant AMERICAN NATIONAL RED CROSS, s/h/a AMERICAN RED CROSS  
(hereinafter referred to as "the Red Cross"), by its undersigned attorneys respectfully represent as  
follows:

1. On or about April 25, 2006, this action was commenced against the Red Cross by  
filing the action in the Supreme Court of the State of New York, New York County, by *pro se*  
plaintiffs Theresa Berman and Phil Berman. Upon information and belief, including a review of  
various documents located in the court file regarding this matter, plaintiffs were granted  
numerous extensions of time within which to serve the defendants. The suit is identified in the  
Supreme Court of the State of New York, New York County, as *Theresa Berman and Phil  
Berman v. Bellevue South Associates, LLP, Phipps Houses Services Inc., William Mulligan,  
Josephine Perrella, Lisa Blount, Neil D. Sonnenfeldt, Eddie Warren, Vincent Bancek, Julia*

*Rodriguez, FJC Security, American Red Cross, The City of New York – N.Y.P.D. and The City of New York, F.D.N.Y.*, Index No. 105635/06.

2. The Summons with Notice is the initial pleading setting forth the claim for relief upon which this *pro se* action is based. The Red Cross first received copies of the Summons with Notice on or about August 8, 2007. A copy of the Summons with Notice is attached as Exhibit "A."

3. No complaint has been served upon the Red Cross.

4. The Plaintiff's Summons with Notice in the Supreme Court of the State of New York, County of New York, purports to set forth claims for "breach of warranty, fraud, negligence, assault, false imprisonment, illegal search, harassment, theft, property damage, personal injury, slander and libel," and demands "\$15 million in compensatory damages," along with "unspecified punitive damages."

5. The petitioner first received notice that this case was removable on August 8, 2007 (the aforesaid date of its receipt of the Summons with Notice), at which time it was determined that federal subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1441(a) and (b) exists over the Red Cross by virtue of 36 U.S.C. § 300105(a)(5).

6. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt of the Summons with Notice by the Red Cross, which received a copy of the Summons with Notice on August 8, 2007.

### **JURISDICTION**

7. Federal subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1441(a) and (b) exists over the Red Cross by virtue of 36 U.S.C. § 300105 (a)(5), a provision of the Red Cross's

federal charter granting it the power to “sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States.”

8. The United States Supreme Court has construed the “sue-and-be-sued” provision of the Red Cross’s charter as conferring “original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state law action it is defending.” *American National Red Cross v. S.G.*, 505 U.S. 247, 248, 112 S.Ct. 2465 (1992).

### PARTIES

9. The Red Cross is informed and believes that the plaintiffs, Theresa Berman and Phil Berman, are now, and were at the time of filing of the Summons and Complaint in this action, and at all intervening times, citizens of the State of New York.

10. The Red Cross is now, and was at the time of the filing of the Summons and Complaint in this action, and at all intervening times, a corporation organized by act of the United States Congress in the District of Columbia, with its principal place of business in the District of Columbia.

11. The Red Cross desires to remove this action to this Court and therefore submits this Notice of Removal, along with Exhibit “A,” in accordance with 28 U.S.C. §§ 1441(a) and (b) and 1446.

12. In satisfaction of the “unanimity rule” of 28 U.S.C. § 1446(a), the undersigned contacted co-defendant Phipps Houses Group, and was informed that Phipps Houses Group consents to the removal of this action.

13. Again in satisfaction of the “unanimity rule” of 28 U.S.C. § 1446(a), on August 28, 2007, this office contacted co-defendant City of New York through Manhattan Torts

Division Borough Chief Jenny Montana-O'Connor, at the Office of Corporation Counsel, and requested consent to the removal of this action (see email attached as Exhibit "B"). This office contacted Ms. Montana-O'Connor again on September 4, 2007, requesting consent to the removal of this action (see email attached as Exhibit "C"). To date, we have not received a reply to the request.

14. Again in satisfaction of the "unanimity rule" of 28 U.S.C. § 1446(a), the undersigned has reviewed the docket of the state court from which this action has been removed and has determined, based on the lack of any affidavits of service or any responsive pleading documents related to co-defendants Bellevue South Associates, LLP, William Mulligan, Josephine Perrella, Lisa Blount, Neil D. Sonnenfeldt, Eddie Warren, Vincent Bancek, Julia Rodriguez and FJC Security, that these defendants have not been served. Consequently, because the above-named co-defendants have not been served with a copy of the initial pleading in this action, their consent to removal is not required. See, e.g., Ell v. S.E.T. Landscape Design, Inc., 34 F.Supp.2d 188 (S.D.N.Y. 1999).

15. The Red Cross reserves the right to amend or supplement this Notice of Removal.

16. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Supreme Court of the State of New York, County of New York.

17. Pursuant to 28 U.S.C. § 1446(d), petitioners are providing written notice to plaintiffs Theresa Berman and Phil Berman at the address provided on plaintiffs' Summons with Notice.

**WHEREFORE**, AMERICAN NATIONAL RED CROSS, the defendant-petitioner in the action described herein, currently pending in the Supreme Court of the State of New York,

County of New York, Index Number 105635/06, prays that the action be removed to this Court.

Dated: New York, New York  
September 6, 2007

Yours, etc.

SEDGWICK, DETERT, MORAN  
& ARNOLD LLP

By: 

Jason D. Turken (JT-0075)

*Attorneys for Defendant*

AMERICAN NATIONAL RED CROSS,  
s/h/a "AMERICAN RED CROSS"

125 Broad Street

New York, New York 10004-2400

(212) 422-0202

[SDMA File No. 2912-122545]

TO: Ms. Theresa Berman  
Mr. Phil Berman  
480 2nd Avenue  
New York, NY 10016

The Phipps Houses Group  
902 Broadway  
New York, NY 10010

New York City Law Department  
Office of the Corporation Counsel  
100 Church Street  
New York, NY 10007

Exhibit A

[Print in black ink to fill in the spaces next to the instructions. Both pages must be completed. This summons cannot be used for divorce actions.]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Ms. Theresa A. Berman  
Mr. Phil Berman

[Your name(s)]

Plaintiff(s)

-against-

Bellevue South Associates L.P. and  
[See Attached RIDER J]

[Name(s) of party being sued] Defendant(s)

SUMMONS WITH NOTICE

Index No.

Date Index No. purchased

4/25/2006

To the Person(s) Named as Defendant(s) above:

06105635

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the plaintiff(s) at the address set forth below, and to do so within 20 days after the service of this summons (not counting the day of service itself), or within 30 days after service is complete if the summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer or appear, a judgment will be entered against you by default for the relief demanded below.

Dated: 4/25/2006

[Date of summons]

**FILED**

APR 25 2006

NEW YORK

COUNTY CLERK'S OFFICE

[Sign your name(s)]

Ms. Theresa A. Berman  
Mr. Phil Berman

[Print your name(s)]

480 2nd Ave.

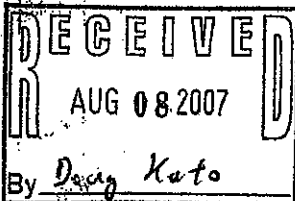
N.Y. City 10013

[Your address(es) and telephone no. (s)]

902 Broadway N.Y. City, C.  
813 Jericho Turnpike  
New Hyde Park 11040

150 Amsterdam At 66th St  
100 Church St. N.Y. City.

[Address(es) of party being sued]





Attached Rider

Phlpps Houses Services Inc.,  
William Mulligan  
Josephine Perrella  
Lisa Blount  
Neil D. Sonnenfeldt  
Eddie Warren  
Vincent Bancek  
Julia Rodriguez  
FJC Security  
American Red Cross  
The City of N.Y. - N.Y.C.D.  
The City of N.Y. - F.D.N.Y.



Notice: The nature of this action is [briefly describe the nature of your case against the defendant(s), such as, breach of contract, negligence]:

Breach of warranty, Fraud, Negligence, Assault,  
 FALSE Imprisonment, ILLEGAL Search, HARASSMENT,  
 Theft, PROPERTY DAMAGE, PERSONAL INJURY, SLANDER,  
 GIBEL.

The relief sought is [briefly describe the kind of relief you are asking for, such as, money damages of \$25,000] Compensatory Money Damages  
of Fifteen million Dollars, \$15,000,000.00 And Unspecified  
Punitive Damages.

should defendant(s) fail to appear herein, judgment will be entered  
 by default for the sum of 15 million compensatory Damages  
And unspecified Punitive [amount of money demanded],  
 with interest from the date of 4/25/06 [date from which  
 interest on the amount demanded is claimed] and the costs of this action.

Venue:

Plaintiff(s) designate New York County as the place of trial. The basis of this designation is [check box that applies]:

- ☒ Plaintiff(s) residence in New York County  
☐ Defendant(s) residence in New York County  
☐ Other [See CPLR Article 5]: \_\_\_\_\_

Exhibit B

**Coleman, Nora**

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**From:** McCauley, Matthew  
**Sent:** Tuesday, August 28, 2007 3:58 PM  
**To:** 'jmontana@law.nyc.gov'  
**Cc:** Turken, Jason; Coleman, Nora; McCauley, Matthew  
**Subject:** Berman v. City of New York, et al (American Red Cross)

Jenny:

Nice chatting with you today.

As I explained, we are under a time constraint for removing this matter to federal court and would need to do so by next week.

Please let me know if your office consents to the removal of the case.

I have also attached copies of pleadings that we have received thus far. If you have any other materials/filings by plaintiff, it would be greatly appreciated if you would provide us with a copy so that we can all be on the same page.

Send my regards to Muriel as you try to pass this case along.

If you have any questions, please contact me at your convenience.

Best Regards,

Matt

**Matthew J. McCauley**

Attorney at Law

SEDGWICK, DETERT, MORAN & ARNOLD LLP

125 Broad Street, 39th Floor

New York, New York 10004-2400

Direct: 212.898.4037

Main: 212.422.0202

Fax: 212.422.0925

[Matthew.McCauley@sdma.com](mailto:Matthew.McCauley@sdma.com)

[www.sdma.com](http://www.sdma.com)

9/5/2007

Exhibit C

**Coleman, Nora**

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**From:** McCauley, Matthew  
**Sent:** Tuesday, September 04, 2007 3:31 PM  
**To:** 'Montana-O'Connor, Jenny'  
**Cc:** Turken, Jason; Coleman, Nora  
**Subject:** RE: Berman v. City of New York, et al (American Red Cross)

Hi Jenny:  
Hope you enjoyed your weekend.  
Just checking in on our request for you consent for removal of this matter to federal court.

Thanks  
Matt

**Matthew J. McCauley**  
SEDGWICK, DETERT, MORAN & ARNOLD LLP  
Direct: 212.898.4037

-----Original Message-----

**From:** Montana-O'Connor, Jenny [mailto:JMontana@law.nyc.gov]  
**Sent:** Tuesday, August 28, 2007 4:32 PM  
**To:** McCauley, Matthew  
**Subject:** RE: Berman v. City of New York, et al (American Red Cross)

Thank you. I forwarded the request to Muriel. Note that we only received a Summons with Notice. We sent a demand for a complaint but our demand was returned as undeliverable, even though we used the address on the Ssummons. I'll keep you posted.

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**From:** McCauley, Matthew [mailto:matthew.mccauley@sdma.com]  
**Sent:** Tuesday, August 28, 2007 3:58 PM  
**To:** Montana-O'Connor, Jenny  
**Cc:** Turken, Jason; Coleman, Nora; McCauley, Matthew  
**Subject:** Berman v. City of New York, et al (American Red Cross)

Jenny:  
Nice chatting with you today.  
As I explained, we are under a time constraint for removing this matter to federal court and would need to do so by next week.  
Please let me know if your office consents to the removal of the case.  
I have also attached copies of pleadings that we have received thus far. If you have any other materials/filings by plaintiff, it would be greatly appreciated if you would provide us with a copy so that we can all be on the same page.  
Send my regards to Muriel as you try to pass this case along.  
If you have any questions, please contact me at your convenience.  
Best Regards,  
Matt

**Matthew J. McCauley**  
Attorney at Law

SEDGWICK, DETERT, MORAN & ARNOLD LLP

9/5/2007

125 Broad Street, 39th Floor  
New York, New York 10004-2400  
Direct: 212.898.4037  
Main: 212.422.0202  
Fax: 212.422.0925  
[Matthew.McCauley@sdma.com](mailto:Matthew.McCauley@sdma.com)  
[www.sdma.com](http://www.sdma.com)

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The information in this email is intended for the named recipients only. It may contain privileged and confidential matter. If you have received this email in error, please notify the sender immediately by replying to this email. Do not disclose the contents to anyone. Thank you.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations, we inform you that any U.S. federal tax advice contained in this correspondence (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

9/5/2007

**CERTIFICATE OF SERVICE**

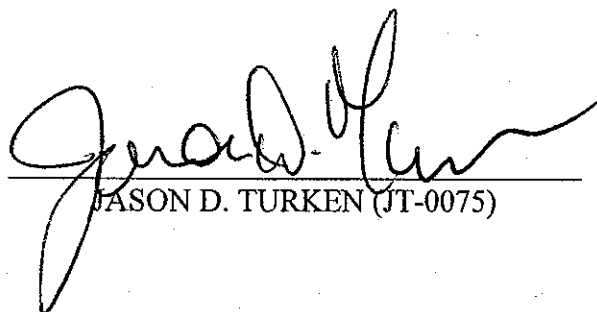
I hereby certify that a true and correct copy of the attached NOTICE OF REMOVAL was served via regular mail on September 6, 2007, upon:

Ms. Theresa Berman  
Mr. Phil Berman  
480 2nd Avenue  
New York, NY 10016

The Phipps Houses Group  
902 Broadway  
New York, NY 10010

New York City Law Department  
Office of the Corporation Counsel  
100 Church Street  
New York, NY 10007

Dated: New York, New York  
September 6, 2007



A handwritten signature in black ink, appearing to read "Jason D. Turken", is written over a horizontal line. Below the line, the text "JASON D. TURKEN (JT-0075)" is printed.